

(c) of this section, the head of the Federal agency or instrumentality receiving the information shall review the evidence and recommendations and shall, not later than 30 days after the receipt of that finding, transmit to the Congress a report specifying—

(A) the nature of the case and a summary of the evidence transmitted by the Board; and

(B) the decision by the Federal agency or instrumentality to take disciplinary or other appropriate action against that individual or the reasons for deciding not to take disciplinary or other action with respect to that individual.

(Pub. L. 99-399, title III, § 304, Aug. 27, 1986, 100 Stat. 861; Pub. L. 100-204, title I, § 156(b), Dec. 22, 1987, 101 Stat. 1354.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-204 inserted “or surrounding the serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad (as the case may be)” after first reference to “mission abroad”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4833 of this title.

§ 4835. Relation to other proceedings

Nothing in this subchapter shall be construed to create administrative or judicial review remedies or rights of action not otherwise available by law, nor shall any provision of this subchapter be construed to deprive any person of any right or legal defense which would otherwise be available to that person under any law, rule, or regulation.

(Pub. L. 99-399, title III, § 305, Aug. 27, 1986, 100 Stat. 862.)

SUBCHAPTER IV—DIPLOMATIC SECURITY PROGRAM

§ 4851. Authorization

(a) Diplomatic security program

(1) In general

In addition to amounts otherwise available for such purposes, the following amounts are authorized to be appropriated for fiscal years 1986 and 1987, for the Department of State to carry out diplomatic security construction, acquisition, and operations pursuant to the Department of State's Supplemental Diplomatic Security Program, as justified to the Congress for the respective fiscal year for “Administration of Foreign Affairs”, as follows:

(A) For “Salaries and Expenses”, \$308,104,000.

(B) For “Acquisition and Maintenance of Buildings Abroad”, \$857,806,000.

(C) For “Counterterrorism Research and Development”, \$15,000,000.

(2) Omitted

(3) **Repealed. Pub. L. 103-236, title I, § 101(c), Apr. 30, 1994, 108 Stat. 388**

(4) **Allocation of amounts authorized to be appropriated**

Amounts authorized to be appropriated by this subsection, and by the amendment made

by paragraph (2), shall be allocated as provided in the table entitled “Diplomatic Security Program” relating to this section which appears in the Joint Explanatory Statement of the Committee of Conference to accompany H.R. 4151 of the 99th Congress (the Omnibus Diplomatic Security and Antiterrorism Act of 1986).

(b) Notification to authorizing Committees of requests for appropriations

In any fiscal year, whenever the Secretary of State submits to the Congress a request for appropriations to carry out the program described in subsection (a) of this section, the Secretary shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such request, together with a justification of each item listed in such request.

(c) **Repealed. Pub. L. 103-236, title I, § 122(b), Apr. 30, 1994, 108 Stat. 392**

(d) Prohibition on reallocations of authorizations

Section 2696(d) of this title shall not apply with respect to any amounts authorized to be appropriated under this section.

(e) Security requirements of other foreign affairs agencies

Based solely on security requirements and within the total amount of funds available for security, the Secretary of State shall ensure that an equitable level of funding is provided for the security requirements of other foreign affairs agencies.

(f) Insufficiency of funds

In the event that sufficient funds are not available in any fiscal year for all of the diplomatic security construction, acquisition, and operations pursuant to the Department of State's Supplemental Diplomatic Security Program, as justified to the Congress for such fiscal year, the Secretary of State shall report to the Congress the effect that the insufficiency of funds will have with respect to the Department of State and each of the other foreign affairs agencies.

(g) Allocation of funds for certain security programs

Of the amount of funds authorized to be appropriated by subsection (a)(1)(A) of this section, \$34,537,000 shall be available to the Secretary of State only for the protection of classified office equipment, the expansion of information systems security, and the hiring of American systems managers and operators for computers at high threat locations.

(h) Furniture, furnishings, and equipment

(1) Use of existing furniture, furnishings, and equipment

If physically possible, facilities constructed or acquired pursuant to subsection (a) of this section shall be furnished and equipped with the furniture, furnishings, and equipment that were being used in the facilities being replaced, rather than with newly acquired furniture, furnishings, and equipment.

(2) Omitted**(3) Repealed. Pub. L. 103-236, title I, § 122(b), Apr. 30, 1994, 108 Stat. 392**

(Pub. L. 99-399, title IV, § 401, Aug. 27, 1986, 100 Stat. 862; Pub. L. 100-204, title I, § 101(c), Dec. 22, 1987, 101 Stat. 1336; Pub. L. 103-236, title I, §§ 101(c), 122(b), Apr. 30, 1994, 108 Stat. 388, 392.)

REFERENCES IN TEXT

The amendment made by paragraph (2), referred to in subsec. (a)(4), is the amendment made by section 401(a)(2) of Pub. L. 99-399 to section 2349aa-4 of this title.

H.R. 4151 of the 99th Congress (the Omnibus Diplomatic Security and Antiterrorism Act of 1986), referred to in subsec. (a)(4), as enacted into law, is Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 853. The Joint Explanatory Statement of the Committee of Conference to accompany H.R. 4151 is set forth in H. Rept. No. 99-783, 99th Congress.

CODIFICATION

Section is comprised of section 401 of Pub. L. 99-399. Subsecs. (a)(2) and (h)(2) of section 401 of Pub. L. 99-399 amended sections 2349aa-4 and 300, respectively, of this title.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-236, § 101(c), struck out heading and text of par. (3). Text read as follows: “There is authorized to be appropriated for the Department of State for ‘Acquisition and Maintenance of Buildings Abroad’ for each of the fiscal years 1988 through 1990, \$417,962,000 to carry out diplomatic security construction, acquisition, and operations pursuant to the Department of State’s Supplemental Diplomatic Security Program. Authorizations of appropriations under this paragraph shall remain available until the appropriations are made.”

Subsec. (c). Pub. L. 103-236, § 122(b), struck out heading and text of subsec. (c). Text read as follows: “Amounts made available for capital projects pursuant to subsection (a) of this section shall be treated as a reprogramming of funds under section 2706 of this title and shall not be available for obligation or expenditure except in compliance with the procedures applicable to such reprogramming.”

Subsec. (h)(3). Pub. L. 103-236, § 122(b), struck out heading and text of par. (3). Text read as follows: “Amounts made available for furniture, furnishings, and equipment pursuant to subsection (a) of this section shall be treated as a reprogramming of funds under section 2706 of this title and shall not be available for obligation or expenditure except in compliance with the procedures applicable to such reprogramming.”

1987—Subsec. (a)(3). Pub. L. 100-204 inserted sentence at end providing that authorizations of appropriations under this paragraph remain available until appropriations are made.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101(c) of Pub. L. 103-236 provided that the amendment made by that section is effective Oct. 1, 1995.

CONSTRUCTION SECURITY CERTIFICATION

Section 160 of Pub. L. 100-204, as amended by Pub. L. 101-246, title I, § 135, Feb. 16, 1990, 104 Stat. 33, provided that:

“(a) CERTIFICATION.—Before undertaking any new construction or major renovation project in any foreign facility intended for the storage of classified materials or the conduct of classified activities, or approving occupancy of a similar facility for which construction or major renovation began before the effective date of this section [Dec. 22, 1987], the Secretary of State, after consultation with the Director of Central Intelligence, shall certify to the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives and the Committee on Foreign Relations of the Senate that—

“(1) appropriate and adequate steps have been taken to ensure the security of the construction project (including an evaluation of how all security-related factors with respect to such project are being addressed);

“(2) the facility resulting from such project incorporates—

“(A) adequate measures for protecting classified information and national security-related activities; and

“(B) adequate protection for the personnel working in the diplomatic facility; and

“(3) a plan has been put into place for the continued evaluation and maintenance of adequate security at such facility, which plan shall specify the physical security methods and technical countermeasures necessary to ensure secure operations, including any personnel requirements for such purposes.

“(b) AVAILABILITY OF DOCUMENTATION.—All documentation with respect to a certification referred to in subsection (a) and any dissenting views thereto shall be available, in an appropriately classified form, to the Chairman of the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate.

“(c) DIRECTOR OF CENTRAL INTELLIGENCE.—The Director of Central Intelligence shall provide to the Secretary of State such assistance with respect to the implementation of this section as the Secretary of State may request.

“(d) DISSENTING VIEWS.—If the Director of Central Intelligence disagrees with the Secretary of State with respect to any project certification made pursuant to subsection (a), the Director shall submit in writing disagreeing views to the Secretary of State.”

REPORT TO CONGRESS ON OBLIGATION OF FUNDS

Pub. L. 100-459, title III, § 302, Oct. 1, 1988, 102 Stat. 2207, provided that: “The Secretary of State shall report to the appropriate committees of the Congress on the obligation of funds provided for diplomatic security and related expenses every month.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100-202, § 101(a) [title III, § 302], Dec. 22, 1987, 101 Stat. 1329, 1329-23.

Pub. L. 99-500, § 101(b) [title III, § 302], Oct. 18, 1986, 100 Stat. 1783-39, 1783-60, and Pub. L. 99-591, § 101(b) [title III, § 302], Oct. 30, 1986, 100 Stat. 3341-39, 3341-60.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4852, 4854, 4855, 4860 of this title.

§ 4852. Diplomatic construction program**(a) Preference for United States contractors**

Notwithstanding section 302 of this title, and where adequate competition exists, only United States persons and qualified United States joint venture persons may—

(1) bid on a diplomatic construction or design project which has an estimated total project value exceeding \$10,000,000; and

(2) bid on a diplomatic construction or design project which involves technical security,

unless the project involves low-level technology, as determined by the Secretary of State.

(b) Exception

Subsection (a) of this section shall not apply with respect to any diplomatic construction or design project in a foreign country whose statutes prohibit the use of United States contractors on such projects. The exception contained in this subsection shall only become effective with respect to a foreign country 30 days after the Secretary of State certifies to the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate what specific actions he has taken to urge such foreign country to permit the use of United States contractors on such projects, and what actions he shall take with respect to that country as authorized by title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4301 et seq.; commonly referred to as the "Foreign Missions Act").

(c) Definitions

For the purposes of this section—

(1) the term "adequate competition" means with respect to a construction or design project, the presence of two or more qualified bidders submitting responsive bids for that project;

(2) the term "United States person" means a person which—

(A) is incorporated or legally organized under the laws of the United States, including State, the District of Columbia, and local laws;

(B) has its principal place of business in the United States;

(C) has been incorporated or legally organized in the United States—

(i) for more than 5 years before the issuance date of the invitation for bids or request for proposals with respect to a construction project under subsection (a)(1) of this section; and

(ii) for more than 2 years before the issuance date of the invitation for bids or request for proposals with respect to a construction or design project which involves physical or technical security under subsection (a)(2) of this section;

(D) has performed within the United States administrative and technical, professional, or construction services similar in complexity, type of construction, and value to the project being bid;

(E) with respect to a construction project under subsection (a)(1) of this section, has achieved total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C)(i);

(F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States,

(ii) employs United States citizens in more than half of its permanent, full-time positions in the United States, and

(iii) will employ United States citizens in at least 80 percent of the supervisory positions on the foreign buildings office project site; and

(G) has the existing technical and financial resources in the United States to perform the contract; and

(3) the term "qualified United States joint venture person" means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.

(d) American minority contractors

Not less than 10 percent of the amount appropriated pursuant to section 4851(a) of this title for diplomatic construction or design projects each fiscal year shall be allocated to the extent practicable for contracts with American minority contractors.

(e) American small business contractors

Not less than 10 percent of the amount appropriated pursuant to section 4851(a) of this title for diplomatic construction or design projects each fiscal year shall be allocated to the extent practicable for contracts with American small business contractors.

(f) Limitation on subcontracting

With respect to a diplomatic construction project, a prime contractor may not subcontract more than 50 percent of the total value of its contract for that project.

(Pub. L. 99-399, title IV, § 402, Aug. 27, 1986, 100 Stat. 864; Pub. L. 101-246, title I, § 132, Feb. 16, 1990, 104 Stat. 32; Pub. L. 102-138, title I, § 131, Oct. 28, 1991, 105 Stat. 662; Pub. L. 103-236, title I, § 162(g)(10), Apr. 30, 1994, 108 Stat. 407.)

REFERENCES IN TEXT

Title II of the State Department Basic Authorities Act of 1956, referred to in subsec. (b), is title II of act Aug. 1, 1956, ch. 841, as added Aug. 24, 1982, Pub. L. 97-241, title II, § 202(b), 96 Stat. 283, known as the Foreign Missions Act, which is classified principally to chapter 53 (§ 4301 et seq.) of this title. For complete classification of title II to the Code, see Short Title note set out under section 4301 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103-236 substituted "Secretary of State" for "Assistant Secretary for Diplomatic Security".

1991—Subsec. (a)(1). Pub. L. 102-138, § 131(1), substituted "\$10,000,000" for "\$5,000,000".

Subsec. (a)(2). Pub. L. 102-138, § 131(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "bid on a diplomatic construction or design project which involves physical or technical security, unless the project—

"(A) involves nonsophisticated, low-level technology, as determined by the Assistant Secretary for Diplomatic Security;

"(B) is for the design or construction of a facility that does not process or store classified material; and

"(C) does not exceed a total value of \$500,000."

1990—Subsec. (a)(2). Pub. L. 101-246 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "bid on a diplomatic construction or design project which involves physical or technical security."

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on Inter-

national Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103-236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103-236, as amended, set out as a note under section 2651a of this title.

CONSTRUCTION OF UNITED STATES EMBASSY IN OTTAWA

Section 125 of Pub. L. 101-246 provided that: "Section 402(a) of the Diplomatic Security Act (22 U.S.C. 4852(a)) shall not apply to the construction or renovation of the United States Embassy in Ottawa, Canada."

§ 4853. Security requirements for contractors

Not later than 90 days after August 27, 1986, the Secretary of State shall issue regulations to—

- (1) strengthen the security procedures applicable to contractors and subcontractors involved in any way with any diplomatic construction or design project; and
- (2) permit a contractor or subcontractor to have access to any design or blueprint relating to such a project only in accordance with those procedures.

(Pub. L. 99-399, title IV, § 403, Aug. 27, 1986, 100 Stat. 865.)

§ 4854. Qualifications of persons hired for diplomatic construction program

In carrying out the diplomatic construction program referred to in section 4851(a) of this title, the Secretary of State shall employ as professional staff (by appointment, contract, or otherwise) only those persons with a demonstrated specialized background in the fields of construction, construction law, or contract management. In filling such positions, the Secretary shall actively recruit women and members of minority groups.

(Pub. L. 99-399, title IV, § 404, Aug. 27, 1986, 100 Stat. 865.)

§ 4855. Cost overruns

Any amount required to complete any capital project described in the Department of State's Supplemental Diplomatic Security Program, as justified to the Congress for the respective fiscal year, which is in excess of the amount made available for that project pursuant to section 4851(a)(1) or (3)¹ shall be treated as a reprogramming of funds under section 2706 of this title and shall not be available for obligation or expenditure except in compliance with the procedures applicable to such reprogrammings.

(Pub. L. 99-399, title IV, § 405, Aug. 27, 1986, 100 Stat. 865.)

REFERENCES IN TEXT

Section 4851(a)(3) of this title, referred to in text, was repealed by Pub. L. 103-236, title I, § 101(c), Apr. 30, 1994, 108 Stat. 388.

¹ See References in Text note below.

§ 4856. Efficiency in contracting

(a) Bonuses and penalties

The Director of the Office of Foreign Buildings shall provide for a contract system of bonuses and penalties for the diplomatic construction program funded pursuant to the authorizations of appropriations provided in this subchapter. Not later than 3 months after August 27, 1986, the Director shall submit a report to the Congress on the implementation of this section.

(b) Surety bonds and guarantees

The Director of the Office of Foreign Buildings shall require each person awarded a contract for work under the diplomatic construction program to post a surety bond or guarantee, in such amount as the Director may determine, to assure performance under such contract.

(c) Disqualification of contractors

No person doing business with Libya may be eligible for any contract awarded pursuant to this Act.

(Pub. L. 99-399, title IV, § 406, Aug. 27, 1986, 100 Stat. 866.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this title", meaning title IV of Pub. L. 99-399, which enacted this subchapter and amended sections 300, 2349aa-4, 3929, and 3929a of this title, section 208 of Title 3, The President, section 5315 of Title 5, Government Organization and Employees, and sections 2 and 11 of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5. For complete classification of title IV of Pub. L. 99-399 to the Code, see Tables.

This Act, referred to in subsec. (c), is Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 853, known as the Omnibus Diplomatic Security and Antiterrorism Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of this title and Tables.

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

§ 4857. Advisory Panel on Overseas Security

Not later than 90 days after August 27, 1986, the Secretary of State shall submit a report to the Congress on the implementation of the 91 recommendations contained in the final report of the Advisory Panel on Overseas Security. If any such recommendation has been rejected, the Secretary shall provide the reasons why that recommendation was rejected.

(Pub. L. 99-399, title IV, § 407, Aug. 27, 1986, 100 Stat. 866.)

§ 4858. Training to improve perimeter security at United States diplomatic missions abroad

(a) Training

It is the sense of Congress that the President should use the authority under chapter 8 of title II of the Foreign Assistance Act of 1961 [22

U.S.C. 2349aa et seq.] (relating to antiterrorism assistance) to improve perimeter security of United States diplomatic missions abroad.

(b) Repealed. Pub. L. 103-236, title I, § 139(20), Apr. 30, 1994, 108 Stat. 398; Pub. L. 103-415, § 1(c), Oct. 25, 1994, 108 Stat. 4299

(Pub. L. 99-399, title IV, § 408, Aug. 27, 1986, 100 Stat. 866; Pub. L. 103-236, title I, § 139(20), Apr. 30, 1994, 108 Stat. 398; Pub. L. 103-415, § 1(c), Oct. 25, 1994, 108 Stat. 4299.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 8 of title II of that Act probably means chapter 8 of part II of that Act, which is classified generally to part VIII (§2349aa et seq.) of subchapter II of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-236, as amended by Pub. L. 103-415, struck out heading and text of subsec. (b). Text read as follows: “Not later than October 1 of each year, the President shall submit a report to the Congress on the progress and problems of improving perimeter security of United States diplomatic missions abroad.”

§ 4859. Protection of public entrances of United States diplomatic missions abroad

The Secretary of State shall install and maintain a walk-through metal detector or other advanced screening system at public entrances of each United States diplomatic mission abroad.

(Pub. L. 99-399, title IV, § 409, Aug. 27, 1986, 100 Stat. 866.)

§ 4860. Reimbursement of Department of the Treasury

The Secretary of State shall reimburse the appropriate appropriations account of the Department of the Treasury out of funds appropriated pursuant to section 4851(a)(1) of this title for the actual costs incurred by the United States Secret Service, as agreed to by the Secretary of the Treasury, for providing protection for the spouses of foreign heads of state during fiscal years 1986 and 1987.

(Pub. L. 99-399, title IV, § 411, Aug. 27, 1986, 100 Stat. 867.)

§ 4861. Inspector General for Department of State

(a) Direction to establish

The Congress directs the Secretary of State to proceed immediately to establish an Office of Inspector General of the Department of State not later than October 1, 1986. Not later than January 31, 1987, the Secretary of State shall submit a report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives on the progress in establishing that office. Such report shall include an accounting of the obligation of funds for fiscal year 1987 for that office.

(b) Duties and responsibilities

The Inspector General of the Department of State (as established by the amendment made

by section 150(a) of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987) is authorized to perform all duties and responsibilities, and to exercise the authorities, stated in section 3929 of this title and in the Inspector General Act of 1978.

(c) Earmark

Of the amounts made available for fiscal year 1987 for salaries and expenses under the heading “Administration of Foreign Affairs”, not less than \$6,500,000 shall be used for the sole purpose of establishing and maintaining the Office of Inspector General of the Department of State.

(d) Limitation on appointment

No career member of the Foreign Service, as defined by section 3903 of this title, may be appointed Inspector General of the Department of State.

(Pub. L. 99-399, title IV, § 413, Aug. 27, 1986, 100 Stat. 867; Pub. L. 100-204, title I, § 134, Dec. 22, 1987, 101 Stat. 1344.)

REFERENCES IN TEXT

The amendment made by section 150(a) of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, referred to in subsec. (b), is the amendment made by section 150(a) of Pub. L. 99-93, title I, Aug. 16, 1985, 99 Stat. 427, to sections 2 and 11 of the Inspector General Act of 1978. See note below.

The Inspector General Act of 1978, referred to in subsec. (b), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section is comprised of section 413 of Pub. L. 99-399, as amended. Subsec. (e), formerly subsec. (a)(5), of section 413 amended section 5315 of Title 5, Government Organization and Employees. A former subsec. (a)(6) of section 413, which amended section 3929 of this title, was repealed by Pub. L. 99-529, title IV, § 405, Oct. 24, 1986, 100 Stat. 3020. Another subsec. (c) of section 413 amended section 3929a of this title.

AMENDMENTS

1987—Pub. L. 100-204 struck out former subsec. (a) designation and heading “Inspector General of Department of State”, redesignated former pars. (1) to (5) as subsecs. (a) to (e), respectively, and struck out former subsec. (b) which related to establishment of the Office of Policy and Program Review. See Codification note above.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 4862. Prohibition on use of funds for facilities in Israel, Jerusalem, or West Bank

None of the funds authorized to be appropriated by this Act may be obligated or expended for site acquisition, development, or construction of any facility in Israel, Jerusalem, or the West Bank.

(Pub. L. 99-399, title IV, § 414, Aug. 27, 1986, 100 Stat. 868.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 853, known as the Omnibus Diplomatic

Security and Antiterrorism Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of this title and Tables.

§ 4863. Use of cleared personnel to ensure secure maintenance and repair of diplomatic facilities abroad

(a) Policies and regulations

The Secretary of State shall develop and implement policies and regulations to provide for the use of persons who have been granted an appropriate United States security clearance to ensure that the security of areas intended for the storage of classified materials or the conduct of classified activities in a United States diplomatic mission or consular post abroad is not compromised in the performance of maintenance and repair services in those areas.

(b) Study and report

The Secretary of State shall conduct a study of the feasibility and necessity of requiring that, in the case of certain United States diplomatic facilities abroad, no contractor shall be hired to perform maintenance or repair services in an area intended for the storage of classified materials or the conduct of classified activities unless such contractor has been granted an appropriate United States security clearance. Such study shall include, but is not limited to, United States facilities located in Cairo, New Delhi, Riyadh, and Tokyo. Not later than 180 days after February 16, 1990, the Secretary of State shall report the results of such study to the Chairman of the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(Pub. L. 99-399, title IV, § 415, as added Pub. L. 101-246, title I, § 133(a), Feb. 16, 1990, 104 Stat. 32.)

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 4864. Increased participation of United States contractors in local guard contracts abroad under diplomatic security program

(a) Findings

The Congress makes the following findings:

(1) State Department policy concerning the advertising of security contracts at Foreign Service buildings has been inconsistent over the years. In many cases, diplomatic and consular posts abroad have been given the responsibility to determine the manner in which the private sector was notified concerning an invitation for bids or a request for proposals with respect to a local guard contract. Some United States foreign missions have only chosen to advertise locally the availability of a local security guard contract abroad.

(2) As a result, many United States security firms that provide local guard services abroad have been unaware that local guard contracts were available for bidding abroad and such firms have been disadvantaged as a result.

(3) Undoubtedly, United States security firms would be interested in bidding on more

local guard contracts abroad if such firms knew of the opportunity to bid on such contracts.

(b) Objective

It is the objective of this section to improve the efficiency of the local guard programs abroad administered by the Bureau of Diplomatic Security of the Department of State and to ensure maximum competition for local guard contracts abroad concerning Foreign Service buildings.

(c) Participation of United States contractors in local guard contracts abroad

With respect to local guard contracts for a Foreign Service building which exceed \$250,000 and are entered into after February 16, 1990, the Secretary of State shall—

(1) establish procedures to ensure that all solicitations for such contracts are adequately advertised in the Commerce and Business Daily;

(2) absent compelling reasons, award such contracts through the competitive process;

(3) in evaluating proposals for such contracts, award contracts to the technically acceptable firm offering the lowest evaluated price, except that proposals of United States persons and qualified United States joint venture persons (as defined in subsection (d) of this section) shall be evaluated by reducing the bid price by 10 percent;

(4) in countries where contract denomination and/or payment in local currencies constitutes a barrier to competition by United States firms—

(A) allow solicitations to be bid in United States dollars; and

(B) allow contracts awarded to United States firms to be paid in United States dollars;

(5) ensure that United States diplomatic and consular posts assist United States firms in obtaining local licenses and permits; and

(6) establish procedures to ensure that appropriate measures are taken by diplomatic and consular post management to assure that United States persons and qualified United States joint venture persons are not disadvantaged during the solicitation and bid evaluation process.

(d) Definitions

For the purposes of this section—

(1) the term “United States person” means a person which—

(A) is incorporated or legally organized under the laws of the United States, including the laws of any State, locality, or the District of Columbia;

(B) has its principal place of business in the United States;

(C) has been incorporated or legally organized in the United States for more than 2 years before the issuance date of the invitation for bids or request for proposals with respect to the contract under subsection (c) of this section;

(D) has performed within the United States or overseas security services similar in complexity to the contract being bid;

(E) with respect to the contract under subsection (c) of this section, has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C);

(F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; and

(ii) employs United States citizens in more than half of its permanent, full-time positions in the United States; and

(G) has the existing technical and financial resources in the United States to perform the contract;

(2) the term “qualified United States joint venture person” means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture;

(3) the term “Foreign Service building” means any building or grounds of the United States which is in a foreign country and is under the jurisdiction and control of the Secretary of State, including residences of United States personnel assigned overseas under the authority of the Ambassador; and

(4) the term “barrier to local competition” means—

(A) conditions of extreme currency volatility;

(B) restrictions on repatriation of profits;

(C) multiple exchange rates which significantly disadvantage United States firms;

(D) government restrictions inhibiting the free convertibility of foreign exchange; or

(E) conditions of extreme local political instability.

(e) United States minority contractors

Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings subject to subsection (c) of this section shall be allocated to the extent practicable for contracts with United States minority small business contractors.

(f) United States small business contractors

Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings subject to subsection (c) of this section shall be allocated to the extent practicable for contracts with United States small business contractors.

(g) Limitation of subcontracting

With respect to local guard contracts subject to subsection (c) of this section, a prime contractor may not subcontract more than 50 percent of the total value of its contract for that project.

(Pub. L. 101-246, title I, §136, Feb. 16, 1990, 104 Stat. 33; Pub. L. 103-236, title I, §141, Apr. 30, 1994, 108 Stat. 401; Pub. L. 105-277, div. G, subdiv. B, title XXII, §2210, Oct. 21, 1998, 112 Stat. 2681-811.)

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, and not as part of the Diplomatic Security Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (c)(3). Pub. L. 105-277, §2210(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “in evaluating and scoring proposals for such contracts, award not less than 60 percent of the total points on the basis of technical factors and subfactors;”

Subsec. (c)(5). Pub. L. 105-277, §2210(2), inserted “and” at end.

Subsec. (c)(6). Pub. L. 105-277, §2210(3), substituted period for “; and” at end.

Subsec. (c)(7). Pub. L. 105-277, §2210(4), struck out par. (7) which read as follows: “give preference to United States persons and qualified United States joint venture persons where such persons are price competitive to the non-United States persons bidding on the contract, are properly licensed by the host government, and are otherwise qualified to carry out all the terms of the contract.”

1994—Subsec. (c). Pub. L. 103-236, §141(1), added pars. (2) to (5), redesignated former pars. (2) and (3) as (6) and (7), respectively, and in par. (6) struck out “due to their distance from the post” after “evaluation process”.

Subsec. (d)(1)(D). Pub. L. 103-236, §141(2)(A), substituted “or” for “and”.

Subsec. (d)(4). Pub. L. 103-236, §141(2)(B)–(D), added par. (4).

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

§ 4865. Security requirements for United States diplomatic facilities

(a) In general

The following security requirements shall apply with respect to United States diplomatic facilities and specified personnel:

(1) Threat assessment

(A) Emergency Action Plan

The Emergency Action Plan (EAP) of each United States mission shall address the threat of large explosive attacks from vehicles and the safety of employees during such an explosive attack. Such plan shall be reviewed and updated annually.

(B) Security Environment Threat List

The Security Environment Threat List shall contain a section that addresses potential acts of international terrorism against United States diplomatic facilities based on threat identification criteria that emphasize the threat of transnational terrorism and include the local security environment, host government support, and other relevant factors such as cultural realities. Such plan shall be reviewed and updated every six months.

(2) Site selection

(A) In general

In selecting a site for any new United States diplomatic facility abroad, the Secretary shall ensure that all United States Government personnel at the post (except those under the command of an area military commander) will be located on the site.

(B) Waiver authority**(i) In general**

Subject to clause (ii), the Secretary of State may waive subparagraph (A) if the Secretary, together with the head of each agency employing personnel that would not be located at the site, determine that security considerations permit and it is in the national interest of the United States.

(ii) Chancery or consulate building**(I) Authority not delegable**

The Secretary may not delegate the waiver authority under clause (i) with respect to a chancery or consulate building.

(II) Congressional notification

Not less than 15 days prior to implementing the waiver authority under clause (i) with respect to a chancery or consulate building, the Secretary shall notify the appropriate congressional committees in writing of the waiver and the reasons for the determination.

(iii) Report to Congress

The Secretary shall submit to the appropriate congressional committees an annual report of all waivers under this subparagraph.

(3) Perimeter distance**(A) Requirement**

Each newly acquired United States diplomatic facility shall be sited not less than 100 feet from the perimeter of the property on which the facility is to be situated.

(B) Waiver authority**(i) In general**

Subject to clause (ii), the Secretary of State may waive subparagraph (A) if the Secretary determines that security considerations permit and it is in the national interest of the United States.

(ii) Chancery or consulate building**(I) Authority not delegable**

The Secretary may not delegate the waiver authority under clause (i) with respect to a chancery or consulate building.

(II) Congressional notification

Not less than 15 days prior to implementing the waiver authority under subparagraph (A) with respect to a chancery or consulate building, the Secretary shall notify the appropriate congressional committees in writing of the waiver and the reasons for the determination.

(iii) Report to Congress

The Secretary shall submit to the appropriate congressional committees an annual report of all waivers under this subparagraph.

(4) Crisis management training**(A) Training of headquarters staff**

The appropriate personnel of the Department of State headquarters staff shall un-

dertake crisis management training for mass casualty and mass destruction incidents relating to diplomatic facilities for the purpose of bringing about a rapid response to such incidents from Department of State headquarters in Washington, D.C.

(B) Training of personnel abroad

A program of appropriate instruction in crisis management shall be provided to personnel at United States diplomatic facilities abroad at least on an annual basis.

(5) Diplomatic security training

Not later than six months after November 29, 1999, the Secretary of State shall—

(A) develop annual physical fitness standards for all diplomatic security agents to ensure that the agents are prepared to carry out all of their official responsibilities; and

(B) provide for an independent evaluation by an outside entity of the overall adequacy of current new agent, in-service, and management training programs to prepare agents to carry out the full scope of diplomatic security responsibilities, including preventing attacks on United States personnel and facilities.

(6) State Department support**(A) Foreign Emergency Support Team**

The Foreign Emergency Support Team (FEST) of the Department of State shall receive sufficient support from the Department, including—

(i) conducting routine training exercises of the FEST;

(ii) providing personnel identified to serve on the FEST as a collateral duty;

(iii) providing personnel to assist in activities such as security, medical relief, public affairs, engineering, and building safety; and

(iv) providing such additional support as may be necessary to enable the FEST to provide support in a post-crisis environment involving mass casualties and physical damage.

(B) FEST aircraft**(i) Replacement aircraft**

The President shall develop a plan to replace on a priority basis the current FEST aircraft funded by the Department of Defense with a dedicated, capable, and reliable replacement aircraft and backup aircraft to be operated and maintained by the Department of Defense.

(ii) Report

Not later than 60 days after November 29, 1999, the President shall submit a report to the appropriate congressional committees describing the aircraft selected pursuant to clause (i) and the arrangements for the funding, operation, and maintenance of such aircraft.

(iii) Authority to lease aircraft to respond to a terrorist attack abroad

Subject to the availability of appropriations, when the Attorney General of the

Department of Justice exercises the Attorney General's authority to lease commercial aircraft to transport equipment and personnel in response to a terrorist attack abroad if there have been reasonable efforts to obtain appropriate Department of Defense aircraft and such aircraft are unavailable, the Attorney General shall have the authority to obtain indemnification insurance or guarantees if necessary and appropriate.

(7) Rapid response procedures

The Secretary of State shall enter into a memorandum of understanding with the Secretary of Defense setting out rapid response procedures for mobilization of personnel and equipment of their respective departments to provide more effective assistance in times of emergency with respect to United States diplomatic facilities.

(8) Storage of emergency equipment and records

All United States diplomatic facilities shall have emergency equipment and records required in case of an emergency situation stored at an off-site facility.

(b) Statutory construction

Nothing in this section alters or amends existing security requirements not addressed by this section.

(Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §606], Nov. 29, 1999, 113 Stat. 1536, 1501A-454).

CODIFICATION

Section was enacted as part of the Secure Embassy Construction and Counterterrorism Act of 1999, and also as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the Diplomatic Security Act which comprises this chapter.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, July 17, 2000, 65 F.R. 45511, provided:

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of Defense the responsibility of the President, under section 606 of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001 (Public Law 106-113) [22 U.S.C. 4865], to submit the required report to the Congress.

You are hereby authorized and directed to publish this delegation in the Federal Register.

WILLIAM J. CLINTON.

FINDINGS

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §602], Nov. 29, 1999, 113 Stat. 1536, 1501A-451, provided that: "Congress makes the following findings:

"(1) On August 7, 1998, the United States embassies in Nairobi, Kenya, and in Dar es Salaam, Tanzania, were destroyed by simultaneously exploding bombs. The resulting explosions killed 220 persons and injured more than 4,000 others. Twelve Americans and 40 Kenyan and Tanzanian employees of the United States Foreign Service were killed in the attack.

"(2) The United States personnel in both Dar es Salaam and Nairobi showed leadership and personal courage in their response to the attacks. Despite the havoc wreaked upon the embassies, staff in both embassies provided rapid response in locating and rescu-

ing victims, providing emergency assistance, and quickly restoring embassy operations during a crisis.

"(3) The bombs are believed to have been set by individuals associated with Osama bin Laden, leader of a known transnational terrorist organization. In February 1998, bin Laden issued a directive to his followers that called for attacks against United States interests anywhere in the world.

"(4) Threats continue to be made against United States diplomatic facilities.

"(5) Accountability Review Boards were convened following the bombings, as required by Public Law 99-399 [see Tables for classification], chaired by Admiral William J. Crowe, United States Navy (Ret.) (in this section referred to as the 'Crowe panels').

"(6) The conclusions of the Crowe panels were strikingly similar to those stated by the Commission chaired by Admiral Bobby Ray Inman, which issued an extensive embassy security report in 1985.

"(7) The Crowe panels issued a report setting out many problems with security at United States diplomatic facilities, in particular the following:

"(A) The United States Government has devoted inadequate resources to security against terrorist attacks.

"(B) The United States Government places too low a priority on security concerns.

"(8) The result has been a failure to take adequate steps to prevent tragedies such as the bombings in Kenya and Tanzania.

"(9) The Crowe panels found that there was an institutional failure on the part of the Department of State to recognize threats posed by transnational terrorism and vehicular bombs.

"(10) Responsibility for ensuring adequate resources for security programs is widely shared throughout the United States Government, including Congress. Unless the vulnerabilities identified by the Crowe panels are addressed in a sustained and financially realistic manner, the lives and safety of United States employees in diplomatic facilities will continue to be at risk from further terrorist attacks.

"(11) Although service in the Foreign Service or other United States Government positions abroad can never be completely without risk, the United States Government must take all reasonable steps to minimize security risks."

AUTHORIZATIONS OF APPROPRIATIONS

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §604], Nov. 29, 1999, 113 Stat. 1536, 1501A-453, provided that:

"(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise authorized to be appropriated by this or any other Act, there are authorized to be appropriated for 'Embassy Security, Construction and Maintenance'—

"(1) for fiscal year 2000, \$900,000,000;

"(2) for fiscal year 2001, \$900,000,000;

"(3) for fiscal year 2002, \$900,000,000;

"(4) for fiscal year 2003, \$900,000,000; and

"(5) for fiscal year 2004, \$900,000,000.

"(b) PURPOSES.—Funds made available under the 'Embassy Security, Construction, and Maintenance' account may be used only for the purposes of—

"(1) the acquisition of United States diplomatic facilities and, if necessary, any residences or other structures located in close physical proximity to such facilities, or

"(2) the provision of major security enhancements to United States diplomatic facilities, to the extent necessary to bring the United States Government into compliance with all requirements applicable to the security of United States diplomatic facilities, including the relevant requirements set forth in section 606 [22 U.S.C. 4865].

"(c) AVAILABILITY OF AUTHORIZATIONS.—Authorizations of appropriations under subsection (a) shall remain available until the appropriations are made.

"(d) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended."

OBLIGATIONS AND EXPENDITURES

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §605], Nov. 29, 1999, 113 Stat. 1536, 1501A-453, provided that:

“(a) REPORT AND PRIORITY OF OBLIGATIONS.—

“(1) REPORT.—Not later than February 1 of the year 2000 and each of the four subsequent years, the Secretary of State shall submit a classified report to the appropriate congressional committees identifying each diplomatic facility or each diplomatic or consular post composed of such facilities that is a priority for replacement or for any major security enhancement because of its vulnerability to terrorist attack (by reason of the terrorist threat and the current condition of the facility). The report shall list such facilities in groups of 20. The groups shall be ranked in order from most vulnerable to least vulnerable to such an attack.

“(2) PRIORITY ON USE OF FUNDS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), funds authorized to be appropriated by section 604 [set out as a note above] for a particular project may be used only for those facilities which are listed in the first four groups described in paragraph (1).

“(B) EXCEPTION.—Funds authorized to be made available by section 604 may only be used for facilities which are not in the first 4 groups described in paragraph (1), if the Congress authorizes or appropriates funds for such a diplomatic facility or the Secretary of State notifies the appropriate congressional committees that such funds will be used for a facility in accordance with the procedures applicable to a reprogramming of funds under section 34(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2706(a)).

“(b) PROHIBITION ON TRANSFER OF FUNDS.—None of the funds authorized to be appropriated by section 604 may be transferred to any other account.

“(c) SEMIANNUAL REPORTS ON ACQUISITION AND MAJOR SECURITY UPGRADES.—On June 1 and December 1 of each year, the Secretary of State shall submit a report to the appropriate congressional committees on the embassy construction and security program authorized under this title [enacting this section, amending section 4831 of this title, and enacting provisions set out as notes under this section]. The report shall include—

“(1) obligations and expenditures—

“(A) during the previous two fiscal quarters; and

“(B) since the enactment of this Act [Nov. 29, 1999];

“(2) projected obligations and expenditures for the fiscal year in which the report is submitted and how these obligations and expenditures will improve security conditions of specific diplomatic facilities; and

“(3) the status of ongoing acquisition and major security enhancement projects, including any significant changes in—

“(A) the budgetary requirements for such projects;

“(B) the schedule of such projects; and

“(C) the scope of the projects.”

DEFINITIONS

For definitions of the terms “Secretary” and “appropriate congressional committees” used in this section and in section 1000(a)(7) [div. A, title VI, §605] of Pub. L. 106-113, set out as a note above, see section 1000(a)(7) [§3] of Pub. L. 106-113, set out as a note under section 2651 of this title.

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §603], Nov. 29, 1999, 113 Stat. 1536, 1501A-452, provided that: “In this title [enacting this section, amending section 4831 of this title, and enacting provisions set out as notes above], the terms ‘United States diplomatic facility’ and ‘diplomatic facility’ mean any chancery, consulate, or other office notified to the host government as diplomatic or consular premises in accordance with the Vienna Conventions on Diplomatic and

Consular Relations, or otherwise subject to a publicly available bilateral agreement with the host government (contained in the records of the United States Department of State) that recognizes the official status of the United States Government personnel present at the facility.”

CHAPTER 59—FASCELL FELLOWSHIP PROGRAM

Sec.

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| 4901. | Fellowship program for temporary service at United States missions abroad. <ul style="list-style-type: none"> (a) Establishment. (b) Designation of fellowships. (c) Purpose of fellowships. (d) Individuals who may receive a fellowship. (e) Women and members of minority groups. |
| 4902. | Fellowship Board. <ul style="list-style-type: none"> (a) Establishment and function. (b) Membership. (c) Meetings. (d) Compensation and per diem. |
| 4903. | Fellowships. <ul style="list-style-type: none"> (a) Number. (b) Remuneration and period. (c) Training. (d) Housing and transportation. (e) Effective date. |
| 4904. | Secretary of State. <ul style="list-style-type: none"> (a) Determinations. (b) Authorities. (c) Funding. |

§ 4901. Fellowship program for temporary service at United States missions abroad

(a) Establishment

There is hereby established a fellowship program pursuant to which the Secretary of State will provide fellowships to United States citizens while they serve, for a period of between one and two years, in positions which would otherwise be held by foreign national employees at United States diplomatic or consular missions abroad.

(b) Designation of fellowships

Fellowships under this chapter shall be known as “Fascell Fellowships”.

(c) Purpose of fellowships

Fellowships under this chapter shall be provided in order to allow the recipient (hereafter in this chapter referred to as a “Fellow”) to serve on a short-term basis at a United States diplomatic or consular mission abroad in order to obtain first hand exposure to that country, including (as appropriate) independent study in that country’s area studies or languages.

(d) Individuals who may receive a fellowship

To receive a fellowship under this chapter, an individual must be a United States citizen who is an undergraduate or graduate student, a teacher, scholar, or other academic, or an other individual, who has expertise in international affairs, foreign languages, or career and professional experience or interest in international affairs, and who has a working knowledge of the principal language of the country in which he or she would serve.

(e) Women and members of minority groups

In carrying out this section, the Secretary of State shall actively recruit women and members of minority groups.